



# SAFRR

## State Alliance for Firesafe Road Regulations

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### Board of Forestry and Fire Protection 2023 Regulations and Priority Review

Comments from SAFRR on State minimum Fire Safe Regulations submitted to [PublicComments@bof.ca.gov](mailto:PublicComments@bof.ca.gov)

October 6, 2023

#### Dear Honorable Board Members and Staff of the Board of Forestry and Fire Protection:

The State Alliance for Firesafe Road Regulations (SAFRR) works to ensure that California's public safety road standards provide for safe and concurrent evacuation and firefighter access, and that local jurisdictions properly implement these State Minimum Fire Safe Regulations. SAFRR appreciates the Board of Forestry and Fire Protection's September 5, 2023, request for information on implementation and effectiveness of rules adopted in accordance with the Administrative Procedures Act. The Board asked for input by October 13, 2023, on three areas: 1) Areas where questions exist on interpretation of the regulatory standards, including potential solutions; 2) Issues encountered in compliance, including potential solutions; 3) Suggested regulatory modifications to clarify existing rule language to achieve the intended resource protection, and/or to reduce inefficiencies.

SAFRR is accordingly providing input under area #2, as we are aware of several cases of improper application of the State Minimum Fire Safe Regulations ("Regulations"). The Regulations need no revisions. Instead, they only need to be correctly followed. A careful reading of Articles 1 and 2 including cross-referencing definitions provides unambiguous requirements in the areas where misapplications are occurring. Therefore, what is required is a detailed mandatory state-wide training of local jurisdictions and CAL FIRE personnel on proper implementation. If the Board believes that adding language (not requiring additional rulemaking) that details those requirements would facilitate compliance in achieving the intended resource protection, SAFRR is willing to provide suggested language.

#### A. Areas of noncompliance include:

- 1) Improper use of **Exceptions**, including
  - (a) improper application to public roads outside a development parcel perimeter,
  - (b) defining "concurrent" and "unobstructed traffic circulation" such that a one-lane road with occasional turnouts is deemed safe concurrent fire apparatus ingress and civilian evacuation, and unobstructed traffic circulation equivalent to a two-lane road,
  - (c) allowing new development on dead-end roads with no secondary access that meets the Regulations' road requirements,
  - (d) improper use of Same Practical Effect that contradicts the stated requirements in the Regulations,
  - (e) not providing material facts that the Exception provides the required Same Practical Effect as the Regulations.

- 2) Improper use of **Exemptions**, including
  - (a) applying the exemption in § 1270.03(b) to any parcel created before 1991, even though there were no conditions imposed in a pre-1991 parcel map relating to perimeters and access to future Buildings as required in the exemption, and
  - (b) applying the exemption in § 1270.03(d) to Roads used for agriculture, mining or timber harvesting/forest land management and that also access residential or commercial Buildings.
- 3) Improper reduction in the **Scope** of the Regulations, either limiting the Scope to only within the development parcel perimeter and excluding the access Roads to reach the parcel perimeter, or limiting the Scope to within the development parcel perimeter and only to new access Roads outside the perimeter, thereby excluding existing Roads outside the parcel.
- 4) Lack of inspection and/or enforcement of the Regulations by CAL FIRE in the SRA (§ 1270.06(d)).

**B. Potential solutions:**

**In-depth training** of all local jurisdictions (fire marshals; those involved in land use planning and permitting) and CAL FIRE personnel on the correct implementation of the Regulations pursuant to the current Regulations, accompanied by inspections and enforcement by CAL FIRE, would address the above areas of noncompliance with no revision of the Regulations required.

1) **Exceptions.**

The Regulations state that **Exceptions** (§ 1270.07) must “provide the Same Practical Effect as these regulations towards providing Defensible Space” accompanied by **material facts** supporting this. Several important requirements of the Regulations are ignored by local jurisdictions as well as by CAL FIRE inspectors, including that (a) the **Same Practical Effect**, which is defined in § 1270.01(aa) to include both access for emergency wildland fire equipment and safe civilian evacuation, is also “as these regulations” (§ 1270.06(a)). Article 2 of the regulations clearly states the requirement for “safe access for emergency Wildfire Equipment and civilian evacuation **concurrently**” and “**unobstructed** traffic circulation during a Wildfire emergency **consistent with** 14 CCR §§ 1273.00 through 1273.09” (emphasis added). Since neither “Concurrent”, “Unobstructed” nor “Consistent” are defined terms in the Regulations, California Fire Code § 201.4 defaults to the definition in Merriam-Websters on-line dictionary, where “Concurrent” means “simultaneous, at the same time”; “Unobstructed” means “unblocked, unhindered, or unimpeded”; and “Consistent” means “free from variation or contradiction”. Therefore, achieving the Same Practical Effect “as these Regulations” as required by § 1273.01 that all roads shall provide at minimum two 10-foot traffic lanes to “provide for two-way traffic flow...” cannot be achieved with a one-lane road even with occasional turnouts, as that is clearly in contradiction and not consistent with two full traffic lanes providing bi-directional unobstructed traffic flow to enable simultaneous fire apparatus ingress and civilian evacuation. Contrary to what some local jurisdictions promote (and fail to provide material facts to support), “Exceptions” as defined in and meeting those requirements of the Regulations are simply not possible for many of the Road specifications in Article 2. Proper training will likely remove these application inconsistencies and make these high-fire risk areas safer.

**Exceptions** must provide the Same Practical Effect within the **Defensible Space**, as defined in § 1270.01(f) as **within the development parcel perimeter**. This definition where Exceptions apply clearly does not include public access Roads that are outside the parcel, yet many jurisdictions have overlooked this important requirement and grant Exceptions on subpar public access Roads outside of the parcel. If the public access Road does not meet the standards in Article 2, development cannot occur.

The Attorney General has confirmed that Exceptions cannot be applied to overcome Dead-end Road length limitations (October 25, 2019 letter to Monterey County, referenced in 2023 FSOR page 6). To properly overcome a Dead-end Road length limit, a second access must be created that meets the Road specifications in Article 2.

**2) Exemptions**

**Exemptions** are detailed in §§ 1270.03 (b) and (d). The examples of misuse listed in A(2) above will be largely eliminated with proper training and CAL FIRE enforcement. It is clear that any pre-1991 parcel that was **not** part of a pre-1991 parcel map (such as a subdivision) that prescribed conditions imposed on access to future buildings, is not included in the exception language in § 1270.03(b). Your Board also discussed that in the 2023 FSOR page 7.

**3) Scope.**

Scope is clearly stated to apply in all of the SRA and subsequent to July 1, 2021, in the VHFHSZ (i.e., in the LRA), to all residential, commercial and industrial Building construction, to manufactured homes, and all parcel maps or other Developments approved after January 1, 1991 (§ 1270.03(a)). The Regulations do not limit Scope to within a development parcel(s) perimeter as some local jurisdictions practice. Limitation to within a parcel perimeter is solely used in the Regulations as per the defined term “Defensible Space” that is **only** used to **limit Exceptions** as discussed above, and not to limit scope. The only limitations to scope are the exemptions in § 1273.03(b) and (d), which do not exempt Roads (ie, public Roads) outside a parcel perimeter. The Regulations clearly apply equally to both public and private Roads as stated in §§ 1270.01(y) and 1273.00.

**C. Summary**

As detailed above, there are several critical areas where the 2023 State Minimum Fire Safe Regulations are misapplied by local jurisdictions. These include misapplication of Exceptions, Exemptions, and Scope. In response to the Board’s September 5 request, SAFRR is providing the above comments to assist the Board in addressing areas of noncompliance through developing a state-wide training program for those who apply and enforce the Regulations. The Regulations are not ambiguous on the requirements when read in their entirety, and the state-wide training should assist local jurisdictions in their proper application. If the Board wishes to add language not requiring new rulemaking to restate and summarize some of these requirements of the Regulations, SAFRR is willing to provide suggested language.

We appreciate your dedication to achieving the intended resource protection of the State Minimum Fire Safe Regulations.

Sincerely,

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CC:  
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